



# FAIRFAX COUNTY

**BOARD OF ZONING APPEALS**  
**PUBLIC HEARING DATE:** May 14, 2014  
**TIME:** 9:00 a. m.

---

V I R G I N I A

**May 7, 2014**

**STAFF REPORT**

**APPEAL APPLICATION A 2012-PR-029**

**PROVIDENCE DISTRICT**

<b>APPELLANT:</b>	Beyer I LLC
<b>LOCATION:</b>	7113 Shreve Road
<b>TAX MAP REF:</b>	40-3 ((12)) 11
<b>ZONING DISTRICTS:</b>	C-8, H-C
<b>SITE AREA:</b>	33,787 square feet
<b>NATURE OF APPEAL:</b>	Appeal of a determination that the appellant has established a storage yard, which is a use not permitted in the C-8 District, on property located in the C-8 and Highway Corridor Overlay Districts in violation of Zoning Ordinance provisions.

MES

For information, contact the Zoning Administration Division, Department of Planning and Zoning, 12055 Government Center Parkway, Suite 807, Fairfax, Virginia 22035-5505, 703-324-1314.



American with Disabilities Act (ADA): For special accommodations, call 703-324-1334 (TTY 711 Virginia Relay Center) seven days in advance of the meeting to make the necessary arrangements.

**DESCRIPTION OF APPEAL****Appellant:**

Beyer I LLC

**Issue:**

Appeal of a determination of a Notice of Violation (NOV) that the appellant has established a storage yard, consisting of land used to store automobiles for an automobile dealership located on property in the City of Falls Church, in the C-8 and Highway Corridor Overlay Districts in violation of Zoning Ordinance provisions.

**Property Description:**

The property that is the subject of this appeal is located at 7113 Shreve Road, on the east side of Shreve Road, just west of the Fairfax County and City of Falls Church boundary and south of Leesburg Pike. The property is zoned C-8, Highway Commercial District, and is within a Highway Corridor Overlay District. A copy of the zoning map sheet showing the subject property is provided on the previous page.

The entire property is used for the storage of vehicles. A photographic illustration, which denotes the boundary between the subject property and the City of Falls Church, is provided as Attachment 1.

**Appellant's Position:**

The appellant's application and basis for appeal are set forth in Attachment 2.

**ZONING ORDINANCE PROVISIONS**

The provisions of the Zoning Ordinance which are germane to this appeal are listed below. The complete text of these provisions is enclosed as Attachment 3.

- Par. 5 of Sect. 2-302, Permitted Uses, Interpretation of District Regulations
- Sect. 20-300, Definition of STORAGE YARD

**BACKGROUND**

- Records reflect that the subject property was rezoned from the R-10 (One-Family Residential, 10,000 Square Feet) District to the C-G (Commercial General) District in 1965.
- On February 9, 1972 Site Plan #593 was approved for the subject property for "Fowler Motors Auto Sales." The site plan depicted an automobile preparation facility consisting of 1,700 square feet, parking for employees and automobiles as well as a 1,000 square foot

building surrounded by display areas. The site plan notes that the approval is void if final building permits are not obtained within one year. However, no subsequent building permits were issued and the property owner never obtained a Non-Residential Use Permit (Non-RUP) for the use.

- It is noted that at the time the site plan was approved, the C-G District allowed auto sales by-right only with a fully enclosed sales room and limited outdoor display of vehicles. Unlimited display of vehicles was only permitted with special permit approval. As described above, the current use of the property is not consistent with the uses depicted on the site plan, as the site currently has no structures, only automobile parking. Further, the C-G District never permitted a storage yard use.
- On September 22, 1976, the subject property was conveyed to the appellant, and recorded on October 8, 1976 in Deed Book 4490, Page 420. A copy of the Deed Book and Page is provided as Attachment 4.
- In 1977 the Zoning Ordinance was amended to permit automobile sales only with special permit approval. In 1978, the property was rezoned to the C-8 District in conjunction with the adoption of the current Zoning Ordinance and the sale of automobiles became a special exception use.
- On October 20, 2010, the Zoning Administration Division received a request for zoning compliance for the subject property and the adjacent Lot 13 (7117 Shreve Road), which also contains cars associated with the dealership. The request was withdrawn when research determined that the property was not compliant with the Zoning Ordinance.
- On September 13, 2012, a complaint was received by the Department of Code Compliance regarding the use of the property without transitional screening, as required by Article 13 of the Zoning Ordinance. The subsequent inspection revealed that the property was being used to store cars associated with the car dealership located in the City of Falls Church. A Notice of Violation was issued on September 24, 2012, stating that the property was being used as a storage yard, which is a use not permitted in the C-8 District.
- The referenced appeal was received on October 10, 2012, accepted on October 31, 2012, and scheduled for public hearing before the BZA on January 16, 2013. In April and again in June of 2013, staff met with the appellant, his representatives and Supervisor Smyth to discuss the possibility of filing a special exception application to cure the violation. However, it was not until October of 2013 that a special exception application was submitted to the County and the application has yet to be accepted due to failure to satisfy the submission requirements. After five administrative moves to allow time for the special exception to be accepted and processed, the last letter granting an administrative move noted that “staff will not support any further administrative moves absent acceptance of the special exception application.” A copy of this letter is provided as Attachment 5. As the special exception has not been accepted, the appeal has been advertised for public hearing on May 14, 2014.

## **ZONING ADMINISTRATOR’S POSITION**

This is an appeal of a determination that the appellant has established a storage yard in the C-8 District in violation of Zoning Ordinance provisions. The Zoning Administrator's position is that it is clear from site inspections that the principal use, indeed the only use, of the property is the storage of vehicles. A storage yard is defined in the Zoning Ordinance as:

**STORAGE YARD:** The use of any space, whether inside or outside a building, for the storage or keeping of construction equipment, machinery, **vehicles** or parts thereof, boats and/or farm machinery.

The inspection conducted by the Department of Code Compliance on September 13, 2012 found that the subject property is being used to store vehicles associated with the automobile dealership located in the City of Falls Church. No structures were found to be located on the subject property. While this use may be permitted in conjunction with structures located on abutting properties with special exception approval as part of a vehicle sales, rental and ancillary service establishment in the C-8 District, no such special exception approval has been obtained. In staff's view, the current special exception application has not been diligently pursued and, as noted above, staff was very clear that the appeal application would not be administratively moved again without acceptance of the special exception application. Furthermore, it is noted that two other automobile dealerships in Fairfax County operating illegally, which are also currently appeal properties, have either come into compliance through the special exception process, or are diligently proceeding through that process.

The appeal application references the 1972 site plan approval noted above, stating that "the site plan approval provides evidence that this type of use, with related storage, was deemed appropriate on the Subject Property". However, as noted above, the Zoning Ordinance in 1972 did not deem such a use as appropriate but rather only permitted limited outside storage of vehicles as a by-right use in conjunction with a sales room. The only legitimate way to have found the use appropriate at that time would have been through the special permit process and there is no evidence that any such special permit approval was obtained. The current use of the property, which is all outdoor storage of vehicles, was not in compliance with the Zoning Ordinance in 1972 and remains in violation of current Zoning Ordinance provisions. Further, the site plan approved in 1972 expired as the buildings shown on the site plan were never constructed.

The appellant also makes reference to a rezoning associated with the abutting Lot 13 which is subject to proffers that permit outside storage of vehicles. The notice of violation only addresses the violation on Lot 11 and therefore the proffers associated with Lot 13 are not germane to this appeal. However, that property is also part of the special exception application that has not yet been accepted and is also a zoning violation, as the property was never developed in accordance with the proffers approved with the rezoning. Approval of the special exception would also abate the violation associated with Lot 13.

Lastly, the appellant makes reference to tax records which refer to "auto parking" as the land use and notes that an appraisal conducted on the property prior to acquisition described the property as paved with asphalt and used for car storage. The appeal statement then notes that the appellant "Acting in reliance on the above information (the tax information and appraisal) and its

prior use, the Appellant believed that vehicle storage was permitted on the subject property and continuously used the Subject Property for this purpose since 1973.” This statement would seem to imply that the appellant is claiming vested rights under Virginia Code Ann. § 15.2-2307. However, the intent of the vested rights statute is to provide for the vesting of a right to a *permissible* use of property against any future attempt, through a zoning ordinance amendment, to make the use impermissible. *Norfolk 102, LLC v. City of Norfolk*, 285 Va. 340, 353, 738 S.E.2d 895, 902 (2013). The use of the subject property, 7113 Shreve Road, as a storage yard has never been permitted as a principal use of the subject property under the current Zoning Ordinance or any version in effect since 1976, when the appellant acquired the property. The 1972 site plan approval, which notably became void within a year, did not depict a storage yard and, therefore, does not represent governmental approval of the current use of the subject property. In short, the appellant does not have a vested right to use the subject property as a storage yard.

The appellant has also failed to satisfy the burden of establishing he has a vested right to an otherwise impermissible use of property under Va. Code Ann. § 15.2-2311(C). The appellant asserts that in its acquisition and use of the subject property it acted in reliance on a land use code in the Department of Tax Administration (DTA) records, characterizing the use of the subject property as “auto parking.” Such reliance is misplaced. DTA does not have the authority to make zoning determinations or waive provisions of the Zoning Ordinance. Moreover, the entry of a land use code in the tax records clearly does not reflect a specific zoning determination that the appellant could use the subject property in a manner not otherwise allowed under the Zoning Ordinance. *See Norfolk*, 285 Va. at 355-56. Thus, the appellant has not cited any basis that would support a determination that it has a vested right to an impermissible use of the subject property.

In conclusion, it is clear from site inspections of the subject property that it is being used to store vehicles associated with the nearby automobile dealership and the appellant does not dispute this fact. Regardless of the length of time that has elapsed since the illegal use was established, it was and remains in violation of the Zoning Ordinance. Staff therefore recommends that the BZA uphold the determination of the Zoning Administrator as set forth in the Notice of Violation dated September 12, 2014.

#### **ATTACHMENTS:**

1. Aerial photographs of the appeal property and nearby properties
2. Appellant’s application and basis for appeal
3. Zoning Ordinance provisions
4. Deed for property
5. Letter dated March 7, 2014 for an Administrative Move